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HOFFMANN & BARON, LLP 6900 JERICO TURNPIKE SYOSSET, NY 11791			KOSLOW, CAROL M	
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			1755	

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/825,626

Applicant(s)

WIERSEMA ET AL.

Examiner

C. Melissa Koslow

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

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The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

This application has an effective filing date of 17 March 2003 since the priority document is in English and teaches the claimed invention.

The disclosure is objected to because of the following informalities: The composition of the material mixed with the carboxylic acid and/or fatty acid in the co-emulsifier system is unclear due to the large number of "and/or" used in its description. The compositions of the preferred combination of surfactant and co-emulsifier system on pages 23-36 are difficult to determine due to the large number of "and/or" in the descriptions. Appropriate correction is required.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: There is no teaching in the specification of a towel or sponge impregnated with the claimed care product, as taught in claim 28.

The narrow phrase or number range in the claims after the terms "preferably", "more preferably" and "most preferably" have been given no patentable weight. This is because the phrase or number range after the terms are examples of the broad term or range and claims are

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given their broadest interpretation. Applicants may add dependent or independent claims directed to the above narrow phrase or range.

Claims 14 and 30 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claims, or amend the claims to place the claims in proper dependent form, or rewrite the claims in independent form.

Claim 14 does not further limit claim 13 since all surfactants are non-ionic, amphoteric, cationic or anionic. Claim 30 does not further limit claim 1 since it states the composition of claim 1 in a metal container. Thus, claim 30 is broader in scope than claim 1.

Claims 19 and 27 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 19 states each of the materials in claim 16 have a HLB value below 13 but pages 47-48 only teach amides, fatty acid amides, amine oxides, fatty acid amine oxides and derivatives thereof have a HLB value below 13. The specification is silent as to the HLB value of the other listed materials, such as the multivalent soaps. This discrepancy between the teaching of claim 19 and the teachings in the specification needs to be corrected. Claim 27 teaches the product of claim 1 has a total summation of the saponification value, the hydroxyl value and the nitrogen value should be in the range of 0.5-40 mg KOH per gram. Pages 20-21 and claim 37 teach when the product of claim 1 is a oil-in-water emulsion, the product has a total summation of the saponification value, the hydroxyl value and the nitrogen value in the range of 0.5-40 mg

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KOH per gram and pages 20-21 and claim 38 teach when the product of claim 1 is a water-in-oil emulsion, the product has a total summation of the saponification value, the hydroxyl value and the nitrogen value in the range of 0.5-20 mg KOH per gram. Thus claim 27 includes the teachings of a water-in-oil emulsion where the product has a total summation of the saponification value, the hydroxyl value and the nitrogen value in the range of greater than 20 up to 40 mg KOH per gram, which is outside the range taught by the rest of the specification. This discrepancy needs to be corrected.

Claim 36 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for dimethicone copolyol/polyether modified polydimethylsiloxanes with a HLB value lower than 8, does not reasonably provide enablement for all silicones with a HLB value below 8. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims.

The claims recite silicones with a HLB value below 8. This encompasses any silicone having a HLB value below 8, such as siloxane-oxyalkylene copolymers with an HLB value in the range of 4-7, as taught in U.S. patent 5,443,760. However, the specification only teaches the use of dimethicone copolyol/polyether modified polydimethylsiloxanes having a HLB value below 8 on page 18, lines 20-21. Such a limited disclosure does not support the breadth of the instant claims. The examiner suggests the incorporation of dimethicone copolyol/polyether modified polydimethylsiloxanes into this claim.

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Claims 16-18, 20, 21, 23, 24, 27, 30 and 39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The composition of the material mixed with the carboxylic acid and/or fatty acid in the co-emulsifier system is unclear due to the large number of "and/or" used in its description. Claim 17 is indefinite since it is unclear what is actually being claimed since there is no clear teaching of a multivalent amine in claim 16. Claim 16 teaches di-, tri- or multiamine soaps, fatty acid amines and fatty acid amine oxides, all of which are multivalent amines. Claim 18 is indefinite since all of the materials in claim 16 comprise a multivalent cation. Claims 16, 18, 20 and 21 are indefinite since it is unclear how and why the multivalent, i.e. divalent and trivalent, cations do not react with the other components, as would be expected since cations, especially calcium, magnesium and zinc cations are fairly reactive. Claims 23 and 24 are indefinite as to its meaning since the wording of claim 23 is very confusing and it is difficult to determine what applicant is attempting to claim in these claims. Claim 27 is indefinite since it does not positively recite that the product has a total summation of the saponification value, the hydroxyl value and the nitrogen value between 0.5-40 mg KOH per gram. It simply states the product should have a value in this range. Claim 30 is indefinite since it is broader in scope than claim 1 since it teaches a container containing the product. Claim 39 provides for the use of the product of claim 1, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

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Claim 39 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10, 12, 26-28, 31-34, 37, 39 and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 1,000,990.

The abstract and the example in paragraph [0040] teaches a leather care product, such as a shoe polish or shoe cream, which is organic solvent free, which means it has a VOC of 0%, and comprises an emulsion of water, wax and an emulsifier. Since the taught composition is a shoe polish or shoe cream, the reference implicitly teaches the method of claim 40 since shoe polishes and creams are applied to the outer surface of a shoe to treat the shoe. The example in paragraph [0040] teaches a wax-in-water emulsion comprising 20 wt% of a blend of a synthetic Hoechst wax and paraffin wax, 75.4 wt% water, 2 wt% of an emulsifier, 0.5 wt% of potassium hydroxide,

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a salt and 0.1 wt% preservative (konservierungsmittel). While the reference is silent as to the penetration value of the taught wax, one of ordinary skill in the art would expect the taught polishes to have a penetration value that falls within that claimed since the taught composition falls within the claimed composition., absent any showing to the contrary. While the reference does not teach the total summation of the saponification value, the hydroxyl value and the nitrogen value of all the components with more than 14 carbon atoms, one of ordinary skill in the art would expect the taught polishes to have a summation that falls within that claimed since the taught composition falls within the claimed composition, absent any showing to the contrary. The reference teaches the claimed care product, use and method.

Claims 1-14, 25-32, 35, 37, 39 and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 3,541,434.

The abstract and the example teach a leather care product for shoes, dressed leather or undressed leather, which includes suede and nubuck leathers. This composition is free of organic solvents. Since the taught composition is a shoe care product, the reference implicitly teaches the method of claim 40 since shoe polishes and creams are applied to the outer surface of a shoe to treat the shoe. The abstract teaches the composition is in form of a paste and it is present in tins, which are conventionally free of chlorine ions, as admitted by applicants. The teaching that the composition is a paste used to treat shoes indicates the composition is a shoe polish. The taught composition, in the example, is an oil-in-water emulsion comprising 5-30, preferably 10, wt% of a montan ester wax, which has a melting point in the range of 30-90°C, 0-20, preferably 12.5, wt% benzene, 0.5-5 wt% of a non-ionic or anionic surfactant emulsifier, 0.5-5 wt% of an anionic polysaccharide, such as carrageenan as a co-emulsifier, 35-90, preferably 71.187, wt% water and



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0-5 wt% of additives such as 0.013 wt% of a preservative and 1.1 wt% silicone. While the reference is silent as to the penetration value of the taught wax, one of ordinary skill in the art would expect the taught polishes to have a penetration value that falls within that claimed since the taught composition falls within the claimed composition., absent any showing to the contrary. While the reference does not teach the total summation of the saponification value, the hydroxyl value and the nitrogen value of all the components with more than 14 carbon atoms, one of ordinary skill in the art would expect the taught polishes to have a summation that falls within that claimed since the taught composition falls within the claimed composition, absent any showing to the contrary. The reference teaches the claimed care product, use and method.

Claims 1-15, 25-32, 35, 37, 39 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 3,541,434.

The abstract for this reference teaches a oil-in-water emulsion for the care of shoes, dressed leather or undressed leather, which includes suede and nubuck leathers. This composition is free of organic solvents. Since the taught composition is a shoe care product, the reference implicitly teaches the method of claim 40 since shoe polishes and creams are applied to the outer surface of a shoe to treat the shoe. The abstract teaches the composition is in form of a paste and it is present in tins, which are conventionally free of chlorine ions, as admitted by applicants. The teaching that the composition is a paste used to treat shoes indicates the composition is a shoe polish. The abstract teaches the composition contains 5-30 wt% of a wax with a melting point of 50-110°C, 0.5-5 wt% nonionic or anionic surfactants, 0.5-5 wt% of an anionic polysaccharide co-emulsifier, 0-10 wt% silicone oil, 0-20 wt% benzene, 0-5 wt% aids or additives and 25-94 wt% water. The amounts of water and the oil phase overlap the claimed

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ranges. The amount of wax falls within and overlaps the claimed ranges. The amount of benzene means that the VOC level is in the range of 0-20 wt%, which falls within and overlaps the claimed range. the melting point of the wax overlaps that claimed range. Column 3 teaches the wax can be a natural wax, synthetic wax, a paraffin wax, or polyolefin wax. The amounts of emulsifier, co-emulsifier and aids and additives fall within the claimed ranges. The amount of silicone oil overlaps the claimed range. Product claims with numerical ranges which overlap prior art ranges were held to have been obvious under 35 USC 103. *In re Wertheim* 191 USPQ 90 (CCPA 1976); *In re Malagari* 182 USPQ 549 (CCPA 1974); *In re Fields* 134 USPQ 242 (CCPA 1962); *In re Nehrenberg* 126 USPQ 383 (CCPA 1960). Column 4 teaches the aids and additives can be a preserving agent. The abstract implies the nonionic emulsifier can be any nonionic surfactant used as a wax emulsifier. Thus one of ordinary skill in the art would have found it obvious to use a neutralized fatty acid non-ionic surfactant as the taught emulsifier since neutralized fatty acids are known nonionic wax emulsifiers. While the reference is silent as to the penetration value of the taught wax, one of ordinary skill in the art would expect the taught polishes to have a penetration value that overlaps that claimed since the taught composition overlaps the claimed composition., absent any showing to the contrary. While the reference does not teach the total summation of the saponification value, the hydroxyl value and the nitrogen value of all the components with more than 14 carbon atoms, one of ordinary skill in the art would expect the taught polishes to have a summation that overlaps that claimed since the taught composition overlaps the claimed composition, absent any showing to the contrary. The reference suggests the claimed care product, use and method.

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Claims 1, 3, 4, 8-10, 12, 26, 28, 31, 32, 35, 39 and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. patent 4,497,919.

This reference teaches a self-polishing water-in-oil shoe polish composition for leather articles. The examples show that the composition is applied to the outer surface of a shoe to treat the shoe. The composition comprises an aqueous phase, an oil phase and an emulsifier where the composition contains about 4-20 wt% organic solvent, which means the VOC level is below 22 wt%. The composition comprises a wax mixture in an amount of about 6-7 wt% and is a mixture of synthetic waxes and insect waxes. The composition contains about 0.5-2.5 wt% nonionic surfactant emulsifier. The composition contains about 0.05-0.5 wt% of a silicone resin and about 0.5-1 wt% coloring agent. The polish can be in the form of an aerosol, paste or cream.

Claims 1-10, 12, 26-28, 31, 32, 35 and 38-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. patent 4,497,919.

This reference teaches a self-polishing water-in-oil shoe polish composition for leather articles. The examples show that the composition is applied to the outer surface of a shoe to treat the shoe. The composition comprises about 25-75 wt% water, about 6-7 wt% of a wax mixture, about 0.5-2.5 wt% nonionic surfactant emulsifier, about 4-20 wt% of an organic solvent, about 0.5-1 wt% of a brown coloring agent, an effective amount of preservative and about 0.05-0.5 wt% of a silicone resin. The amounts overlap and fall within the claimed ranges. Product claims with numerical ranges which overlap prior art ranges were held to have been obvious under 35 USC 103. *In re Wertheim* 191 USPQ 90 (CCPA 1976); *In re Malagari* 182 USPQ 549 (CCPA 1974); *In re Fields* 134 USPQ 242 (CCPA 1962); *In re Nehrenberg* 126 USPQ 383 (CCPA 1960). The wax mixture is a mixture of synthetic waxes and insect waxes. The polish can be in

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the form of an aerosol, paste or cream. While the reference does not teach packing the composition in a metal container which is free of chloride ion, applicants admit that this type of container is conventional in the art. Thus it would have been obvious to pack the taught composition in a metal container which is free of chloride ion. While the reference is silent as to the penetration value of the taught wax, one of ordinary skill in the art would expect the taught polishes to have a penetration value that overlaps that claimed since the taught composition overlaps the claimed composition., absent any showing to the contrary. While the reference does not teach the total summation of the saponification value, the hydroxyl value and the nitrogen value of all the components with more than 14 carbon atoms, one of ordinary skill in the art would expect the taught polishes to have a summation that overlaps that claimed since the taught composition overlaps the claimed composition, absent any showing to the contrary. The reference suggests the claimed care product, use and method.

Claims 1, 2, 6-14, 22, 26, 28, 29, 31, 32, 35, 37 and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. patent 4,554,083.

This reference teaches a wax-in-water leather or shoe care product which is free of organic solvents. The composition is used on natural leather and mat leather, which includes nubuck and suede. The taught liquid composition is applied by a sponge or cloth, which means the care product reads upon the claimed impregnated towel or sponge. The amount of oil phase in this composition is about 3-20 wt% oil phase and about 15-45 wt% of at least one wax selected from a carnauba, candelilla and montanic acid ester wax. These waxes have a dropping or melting point in the range of 75-90°C. The composition contains an emulsifier system of an anionic surfactant and a hydroxyalkylamine, such as di- and triethanolamines, co-emulsifier. The

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example teaches a composition which fall within the claimed composition. The taught composition teaches the claimed composition and method.

Claims 1-14, 22, 25-27, 31, 32, 35, 37 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. patent 4,554,083.

This reference teaches a wax-in-water leather or shoe care product which is free of organic solvents. The composition is used on natural leather and mat leather, which includes nubuck and suede. The taught liquid composition is applied by a sponge or cloth, which means the care product reads upon the claimed impregnated towel or sponge. The composition comprises 80-97 wt% water and 3-20 wt% of an oil phase comprising about 15-45 wt% wax, about 6-24 wt% emulsifier, about 0-2 wt% hydroxyalkylamine, such as mono-, di and triethanol, as a co-emulsifier and 0-30 wt% of optional components, such as silicone defoamers, coloring agents and preserving agent. While the reference is silent as to the penetration value of the taught wax, one of ordinary skill in the art would expect the taught polishes to have a penetration value that overlaps that claimed since the taught composition overlaps the claimed composition., absent any showing to the contrary. While the reference does not teach the total summation of the saponification value, the hydroxyl value and the nitrogen value of all the components with more than 14 carbon atoms, one of ordinary skill in the art would expect the taught polishes to have a summation that overlaps that claimed since the taught composition overlaps the claimed composition, absent any showing to the contrary. The reference suggests the claimed care product and method.

Claims 1-6, 8, 12, 26, 28, 31, 32, 39 and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. patent 6,190,572.

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This reference teaches a leather and shoe emulsion polish comprising 30-40 wt% of an oil phase of a mixture of 0.1-0.5 wt% antioxidant, 2-20 wt% beeswax and 1-15 wt% carnauba wax; 60-70 wt% of an aqueous phase of 60-70 wt% water, 0.05-5 wt% sodium benzoate as an antiseptic and 0.1-1 wt% ethylamine and 3-15 wt% oleic acid as an emulsifier. The composition is applied to the outer surface of a shoe. The composition is an oil-in-water or a water-in-oil emulsion. While the reference is silent as to the penetration value of the taught wax, one of ordinary skill in the art would expect the taught polishes to have a penetration value that falls within that claimed since the taught composition falls within the claimed composition., absent any showing to the contrary. While the reference does not teach the total summation of the saponification value, the hydroxyl value and the nitrogen value of all the components with more than 14 carbon atoms, one of ordinary skill in the art would expect the taught polishes to have a summation that falls within that claimed since the taught composition falls within the claimed composition, absent any showing to the contrary. The reference teaches the claimed care product, use, and method.

Claims 1-12, 26-28, 30-35 and 37-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. patent 6,190,572.

This reference teaches a leather and shoe emulsion polish comprising 30-40 wt% of an oil phase of a mixture of 0.1-0.5 wt% antioxidant, 2-20 wt% beeswax and 1-15 wt% carnauba wax; 60-70 wt% of an aqueous phase of 60-70 wt% water, 0.05-5 wt% sodium benzoate as an antiseptic and 0.1-1 wt% ethylamine and 3-15 wt% oleic acid as an emulsifier. The amounts overlap the claimed ranges. Product claims with numerical ranges which overlap prior art ranges were held to have been obvious under 35 USC 103. *In re Wertheim* 191 USPQ 90 (CCPA 1976); *In re*

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*Malagari* 182 USPQ 549 (CCPA 1974); *In re Fields* 134 USPQ 242 (CCPA 1962); *In re Nehrenberg* 126 USPQ 383 (CCPA 1960). The composition is applied to the outer surface of a shoe. The taught waxes have a melting point in the claimed range. The composition is an oil-in-water or a water-in-oil emulsion. While the reference is silent as to the penetration value of the taught wax, one of ordinary skill in the art would expect the taught polishes to have a penetration value that overlaps that claimed since the taught composition overlaps the claimed composition, absent any showing to the contrary. While the reference does not teach the total summation of the saponification value, the hydroxyl value and the nitrogen value of all the components with more than 14 carbon atoms, one of ordinary skill in the art would expect the taught polishes to have a summation that overlaps that claimed since the taught composition overlaps the claimed composition, absent any showing to the contrary. While the reference does not teach packing the composition in a metal container which is free of chloride ion, applicants admit that this type of container is conventional in the art. Thus it would have been obvious to pack the taught composition in a metal container which is free of chloride ion. The reference suggests the claimed care product and method.

Claims 1, 2, 26, 28, 39 and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. patent 3,551,169 or 3,931,079.

This reference teaches a shoe cream polish comprising a paraffin wax in water emulsion. The taught compositions are free of organic solvent and thus have a VOC level of 0%. The examples teach the polish is applied to the outer surface of a shoe. The reference teaches the claimed product, use and method.

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Claims 1-13, 25-28, 30-32, 37, 39 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. patent 3,551,169.

This reference teaches a shoe cream polish comprising a paraffin wax in water emulsion. The taught compositions are free of organic solvent and thus have a VOC level of 0%. The polish contains 40-75 parts wax having a melting point of 50-71°C, 25-60 parts water and an emulsifying amount of nonionic or ionic emulsifying agent, which is 1-10 parts. Thus the composition comprises about 1-10 wt% emulsifier, about 40-75 wt% wax and about 25-60 wt% water. The taught composition overlaps the claimed range. Product claims with numerical ranges which overlap prior art ranges were held to have been obvious under 35 USC 103. *In re Wertheim* 191 USPQ 90 (CCPA 1976); *In re Malagari* 182 USPQ 549 (CCPA 1974); *In re Fields* 134 USPQ 242 (CCPA 1962); *In re Nehrenberg* 126 USPQ 383 (CCPA 1960). The examples show that the emulsifier can be an equal amount of a surfactant and a co-emulsifier surfactant. Example II teaches the polish can contain about 2 wt% coloring agent. While the reference is silent as to the penetration value of the taught wax, one of ordinary skill in the art would expect the taught polishes to have a penetration value that overlaps that claimed since the taught composition overlaps the claimed composition., absent any showing to the contrary. While the reference does not teach the total summation of the saponification value, the hydroxyl value and the nitrogen value of all the components with more than 14 carbon atoms, one of ordinary skill in the art would expect the taught polishes to have a summation that overlaps that claimed since the taught composition overlaps the claimed composition, absent any showing to the contrary. While the reference does not teach packing the composition in a metal container



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which is free of free of chloride ion. The reference suggests the claimed care product and method.

Claims 1-15, 25-28, 30-32, 35, 37, 39 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. patent 3,931,079.

This reference teaches a wax in water shoe polish emulsion comprising about 2-7 wt% wax, about 0.1-0.7 wt% silicones, about 0.7-1.5 wt% emulsifier, about 0.95-2 wt% morpholine, about 0.2-0.6 wt% viscosity regulator, about 0.2-0.6 wt% triethanolamine, 0-5 wt% dye, about 0.4-0.8 wt% stabilizer and about 20-95 wt% water. . The taught composition overlaps the claimed range. Product claims with numerical ranges which overlap prior art ranges were held to have been obvious under 35 USC 103. *In re Wertheim* 191 USPQ 90 (CCPA 1976); *In re Malagari* 182 USPQ 549 (CCPA 1974); *In re Fields* 134 USPQ 242 (CCPA 1962); *In re Nehrenberg* 126 USPQ 383 (CCPA 1960). The wax can be at least one of microcrystalline wax, montan wax, montanic acid ester wax, Fisher Tropsch wax, plant waxes and beeswax. The melting points of these waxes overlap the claimed range. The mix of emulsifier and morpholine act as a emulsifier system of a emulsifier and a co-emulsifier. The emulsifiers are preferably fatty acid salts (neutralized fatty acid) which are nonionic surfactants. While the reference is silent as to the penetration value of the taught wax, one of ordinary skill in the art would expect the taught polishes to have a penetration value that overlaps that claimed since the taught composition overlaps the claimed composition., absent any showing to the contrary. While the reference does not teach the total summation of the saponification value, the hydroxyl value and the nitrogen value of all the components with more than 14 carbon atoms, one of ordinary skill in the art would expect the taught polishes to have a summation that overlaps that claimed since the taught

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composition overlaps the claimed composition, absent any showing to the contrary. While the reference does not teach packing the composition in a metal container which is free of free of chloride ion. The reference suggests the claimed care product and method.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melissa Koslow whose telephone number is (571) 272-1371. The examiner can normally be reached on Monday-Friday from 8:00 AM to 3:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo, can be reached at (571) 272-1233.

The fax number for all official communications is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

cmk  
October 31, 2005

  
C. Melissa Koslow  
Primary Examiner  
Tech. Center 1700